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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,)	Case No.
a state agency,)	
)	
Plaintiff,)	COMPLAINT FOR CIVIL
)	PENALTIES UNDER THE
v.)	POLITICAL REFORM ACT OF 1974,
)	AS AMENDED
DEMOCRATIC NATIONAL COMMITTEE NON-)	
FEDERAL—CORPORATE, ANDREW TOBIAS,)	(Government Code §§ 91001(b) and
CAROL PENSKY, and DOES 1 through 20,)	91004)
inclusive,)	
)	UNLIMITED CIVIL ACTION
Defendants.)	

Plaintiff Fair Political Practices Commission, a state agency, alleges as follows:

1. Plaintiff brings this action in the public interest to enforce the provisions of the Political Reform Act of 1974. (Gov. Code, §§ 81000-91014.)

JURISDICTION AND VENUE

2. This court has original jurisdiction over the amount in controversy in this matter. As the cause of action occurred in connection with campaign statements that should have been filed with the California Secretary of State's Office, located in the County of Sacramento, the County of Sacramento is the proper venue for this action, pursuant to Code of Civil Procedure section 393.

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1 **PARTIES**

2 **PLAINTIFF FAIR POLITICAL PRACTICES COMMISSION**

3 3. Plaintiff Fair Political Practices Commission (the “FPPC”) is a state agency created by the
4 Political Reform Act of 1974 (the “Act”). (Gov. Code, §§ 81000-91014.) Plaintiff FPPC has primary
5 responsibility for the impartial, effective administration and implementation of the Act. (Gov. Code, §
6 83111.) Pursuant to Government Code section 91001, subdivision (b), Plaintiff FPPC is the civil
7 prosecutor for matters involving state election campaigns, and is authorized to maintain this action under
8 Government Code sections 91001, subdivision (b), and 91004.

9 **DEFENDANTS DEMOCRATIC NATIONAL COMMITTEE NON-FEDERAL—CORPORATE,**
10 **ANDREW TOBIAS, CAROL PENSKY and DOES 1 through 20**

11 4. Defendant Democratic National Committee Non-Federal—Corporate (the “Committee”) was, at
12 all times relevant to this matter, a state general purpose recipient committee as defined in Government
13 Code sections 82013, subdivision (a), and 82027.5, subdivision (b).

14 5. Defendant Andrew Tobias was, at all times relevant to this matter, the treasurer of Defendant
15 Committee.

16 6. Defendant Carol Pensky was, at all times relevant to this matter, the assistant treasurer of
17 Defendant Committee.

18 7. Defendants Doe 1 through Doe 20, inclusive, are sued herein under fictitious names. Their true
19 names and capacities are unknown to Plaintiff. When said true names and capacities are ascertained,
20 Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is
21 informed and believes, and thereon alleges, that each of the fictitiously named Defendants is legally
22 responsible in some manner for the violations of the Act alleged herein.

23 **CAMPAIGN REPORTING REQUIREMENTS**

24 8. An express purpose of the Act, as set forth in Government Code section 81002, subdivision (a),
25 is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully
26 disclosed to the public, so that voters may be better informed, and so that improper practices may be
27 inhibited.

1 9. In furtherance of this purpose of disclosure, the Act sets forth a comprehensive campaign
2 reporting system, designed to disclose to the public, in a timely manner, the election activities of
3 California political candidates and committees. (Gov. Code, § 84200 et seq.)

4 10. In 1997, the Legislature amended the Act to require committees that are significantly active on
5 the state level to file their campaign statements electronically as well as on paper. When doing so, the
6 Legislature specifically declared, as set forth in Government Code section 84601, subdivisions (b) and
7 (c), that public access to campaign disclosure information is a vital and integral component of a fully
8 informed electorate, and that advances in technology have made it viable for disclosure statements
9 required by the Act to be filed online, thereby maximizing their availability to the public. The Act
10 therefore sets forth an online campaign disclosure program.

11 **CIVIL LIABILITY**

12 11. Government Code section 91004 provides that any person who intentionally or negligently
13 violates any of the reporting requirements of the Act shall be liable in a civil action in an amount up to
14 the amount not properly reported. Persons that violate Government Code sections 84200.5 and 84605
15 are liable in a civil action brought pursuant to Government Code section 91004.

16 12. Pursuant to Government Code sections 81004, subdivision (b) and 84100, and California Code
17 of Regulations, title 2, section 18427, subdivision (a), it is the duty of a committee's treasurer to ensure
18 that the committee complies with all of the requirements of the Act concerning the receipt and
19 expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and
20 severally liable, along with the committee, for any reporting violations committed by the committee.
21 (Gov. Code, § 91006.) Pursuant to California Code of Regulations, title 2, section 18426.1, if a
22 committee has an assistant treasurer, the assistant treasurer may be held jointly and severally liable,
23 along with the committee and the treasurer, for any reporting violation that arises from a campaign
24 statement signed by the assistant treasurer, or that arises when the treasurer is unavailable or the office
25 of treasurer is vacant.

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FIRST CAUSE OF ACTION

(FAILURE TO TIMELY FILE PRE-ELECTION CAMPAIGN STATEMENT IN PAPER FORMAT)

13. Plaintiff FPPC re-alleges, and incorporates herein, paragraphs one through twelve, as though set forth at length.

14. Government Code section 84200.5, subdivision (d) requires a state general purpose committee to file a pre-election campaign statement before a statewide election when the committee is a recipient committee, as defined in Government Code section 82013, subdivision (a), and the committee makes contributions totaling \$500 or more during the period covered by the pre-election campaign statement.

15. As defined by Government Code section 82027.5, subdivision (b), a state general purpose committee includes a committee that primarily exists to support or oppose candidates or measures voted on in a state election.

16. Government Code section 84200.7 sets forth the pre-election filing schedule for November elections held in even-numbered years. Under that statute, the first pre-election campaign statement must be filed no later than October 5, covering the reporting period July 1 through September 30. The second pre-election campaign statement must be filed no later than 12 days before the election, for the period ending 17 days before the election. For the November 7, 2000 statewide general election, the filing deadline for the second pre-election statement was October 26, 2000.

17. Pursuant to section 84215, subdivision (a), a state general purpose committee must file an original and a copy of its periodic campaign statements with the Secretary of State. The committee must also file two copies of the statement with the clerk of the county in which it is domiciled, the Registrar-Recorder of the County of Los Angeles, and the Registrar of Voters of the City and County of San Francisco.

Failure to Timely File Second Pre-election Campaign Statement

18. During the reporting period October 1, 2000 through October 21, 2000, Defendant Committee made contributions totaling \$1,201,861 to the Democratic State Central Committee of California.

19. By making contributions in excess of \$500 during the second pre-election reporting period July 1, 2000 through September 30, 2000, Defendant Committee, as a state general purpose recipient committee, and Defendants Tobias and Pensky, as the treasurer and assistant treasurer of Defendant

Committee, had a duty to file a paper second pre-election campaign statement by October 26, 2000, disclosing contributions received and expenditures made during the reporting period October 1 through October 21, 2000.

20. Defendants failed to file the required second pre-election campaign statement, for the reporting period October 1, 2000 through October 21, 2000, by the October 26, 2000 due date.

21. When failing to file the paper second pre-election campaign statement by the October 26, 2000 due date, Defendants, at a minimum, failed to exercise due care to ensure that Defendant Committee complied with all the reporting requirements of the Act.

22. By failing to file a paper second pre-election campaign statement by October 26, 2000, disclosing the making of contributions totaling \$1,201,861, Defendants intentionally or negligently violated Government Code section 84200.5, subdivision (d).

23. Defendants' failure to timely file the paper second pre-election campaign statement by the October 26, 2000 due date is part of a pattern of intentional or negligent conduct. In connection with the November 7, 2000 general election, Defendants failed to file a paper first pre-election campaign statement, for the reporting period July 1, 2000 through September 30, 2000, by the October 5, 2000 due date.

24. During the FPPC's investigation of this matter, additional older campaign reporting violations were discovered. In 1994 and 1996, Defendants failed to file paper pre-election campaign statements prior to the statewide primary and general elections.

SECOND CAUSE OF ACTION

(FAILURE TO TIMELY FILE PRE-ELECTION CAMPAIGN STATEMENT

IN ELECTRONIC FORMAT)

25. Plaintiff FPPC re-alleges, and incorporates herein, paragraphs one through twenty-two as though set forth at length.

26. Government Code section 84605, subdivision (b), requires a general purpose committee that receives contributions or makes expenditures totaling \$50,000 or more to support or oppose candidates for elective state office or state measures, to file its campaign statements electronically with the Secretary of State, in addition to filing its campaign statements in a paper format. Government Code

1 section 84605, subdivision (g) states that once a person is required to file electronically, the person shall
2 be required to file all subsequent campaign statements electronically. Government Code section 84605,
3 subdivision (i) provides that a committee, which is filing its campaign statements electronically, must
4 continue to file paper campaign statements, and that the committee's paper campaign statements are
5 considered the official filings of the committee.

6 Failure to Timely File Electronic Second Pre-election Campaign Statement

7 27. Defendant Committee, as an electronic filer, and Defendants Tobias and Pensky, as the treasurer
8 and assistant treasurer of Defendant Committee, had a duty to file an electronic second pre-election
9 campaign statement by October 26, 2000, disclosing contributions received and expenditures made
10 during the reporting period October 1, 2000 through October 21, 2000.

11 28. Defendants failed to file the required electronic second pre-election campaign statement, for the
12 reporting period October 1, 2000 through October 21, 2000, by the October 26, 2000 due date.

13 29. When failing to file the electronic second pre-election campaign statement by the October 26,
14 2000 due date, Defendants, at a minimum, failed to exercise due care to ensure that Defendant
15 Committee complied with all the reporting requirements of the Act.

16 30. By failing to file an electronic second pre-election campaign statement by October 26, 2000,
17 disclosing the making of contributions totaling \$1,201,861, Defendants intentionally or negligently
18 violated Government Code section 84200.5, subdivision (d).

19 31. Defendants' failure to timely file the electronic second pre-election campaign statement by the
20 October 26, 2000 due date is part of a pattern of intentional or negligent conduct. In connection with the
21 November 7, 2000 general election, Defendants failed to file an electronic first pre-election campaign
22 statement, for the reporting period July 1, 2000 through September 30, 2000, by the October 5, 2000 due
23 date.

24 WHEREFORE, Plaintiff FPPC prays for judgment against Defendants as follows:

25 1. For statutory penalties against Defendants Democratic National Committee Non-Federal—
26 Corporate, Andrew Tobias, and Carol Pensky, jointly and severally, payable to the "General Fund of the
27 State of California," according to proof, in an amount up to the amount not properly reported, as
28 permitted by Government Code sections 91004 and 91006.

1 2. For such other and further relief as the Court may deem proper.

2 Dated: February 24, 2005

FAIR POLITICAL PRACTICES COMMISSION

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4 By:

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6 Julia Bilaver
7 Attorney for Plaintiff
8 Fair Political Practices Commission
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